

REMARKS

Claims 1-67 are pending and at issue in this application. The Examiner has required the Applicants to elect one of Groups I-II in the Office Action under 35 U.S.C. §121:

Group I: Claims 1-46, drawn to a dry formulation comprising coated oxazolidinone particles each comprising a core, classified in class 424, subclasses 458, 471; and
Group II: Claims 47-67, drawn to a method of treating or preventing a gram-positive bacterial infection comprising administering a therapeutically effective dose of a composition comprising a core comprising coated linezolid particles, classified in class 514, subclass 974.

In addition, the Examiner has requested that Applicants elect a single species for search purposes based on claims 2 and 27, and claims 15 and 41.

Applicants provisionally elect, with traverse, Group I, claims 1-46, drawn to a dry formulation comprising coated oxazolidinone particles. In addition, Applicants elect, with traverse, the species linezolid recited in claims 2 and 27, and the species disaccharide recited in claims 15 and 41. All pending claims read on the elected species. Applicants reserve the right to file one or more divisional applications directed to the non-elected subject matter in this application. Further, Applicants hereby reserve their right to have other species considered upon allowance of a generic claim.

Applicants traverse the Restriction Requirement. The Examiner states that the inventions of Groups I and II are related as product and process of use. In addition, the Examiner asserts that the process as claimed can be practiced using other gram-positive bacteria antibiotics such as minocycline and rifampin.

Applicants traverse the Office's rejection because searching the claimed subject matter in one application would not place a serious burden on the Examiner. M.P.E.P. § 803. According to M.P.E.P. § 803 the Examiner can only restrict patentably distinct inventions when (1) the inventions are independent or distinct as claimed and (2) where there is a serious burden on the Examiner if restriction is not required.

In Group I, independent claim 1 recites a dry formulation comprising, *inter alia*, "coated oxazolidinone particles". In Group II, independent claim 47 recites a "method of treating or preventing a gram-positive bacterial infection comprising . . . coated linezolid particles . . .". Linezolid is a species of the oxazolidinone compounds. (See claim 2). As such, a search for the claims of Group I will search the claims of Group II.

Further, Applicants respectfully submit that the Office has made no showing that prosecuting the claims of the invention in one application would be burdensome. The Examiner asserts that the process as claimed can be practiced using other gram-positive bacteria antibiotics such as minocycline and rifampin. But minocycline and rifampin are not oxazolidinone compounds. Hence, the process as claimed cannot be practiced using minocycline and rifampin as asserted

by the Examiner. Applicants therefore submit that the Office has made no showing that prosecuting the claims of the invention in one application would be burdensome and the requirement of restriction is improper.

In addition, Applicants traverses the election of species requirement on the ground that it is improper since prosecution of the restricted subject matter in a single application would not place a serious burden on the Examiner. MPEP §803.

As set forth in the M.P.E.P., if the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all claims on the merits, even though they are directed to independent and distinct inventions. M.P.E.P. 803.02.

Claims 2, 15, and 41 include sufficiently few species that a search and examination of all the species at one time would not impose a serious burden on the examiner. For example, the five species of claim 2 share a common 2-oxo-5-oxazolidinyl nucleus. In addition, the species of claims 15 and 41 contain 4 species or mixtures thereof and are all sugars. Hence, the members of the claimed Markush groups are sufficiently few in number and are related that a search and examination of the entire claim can be made without serious burden.

CONCLUSION

In view of the above, Applicants submit that the restriction requirement is improper and respectfully requests that the Office withdraw the restriction requirement.

Respectfully submitted,

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